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STRENGTHENING INDIA'S ARBITRATION REGIME: AN EXAMINATION OF THE DRAFT ARBITRATION AND CONCILIATION AMENDMENT BILL 2024

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Abstract

The alternative mechanism for resolving disputes gained significance over recent decades as the judiciary is stacked with the burden of pending cases. As the maxim 'Justice delayed is justice denied' portraits the injustice suffered by the party due to the failure to resolve the disputes timely, envisage the necessity of the emergence of alternative dispute resolution. ADR is the remedy for the desire for quick and affordable justice in a fair and reasonable manner. Limitations of the conventional system of judiciary is met through these tools of dispute resolution which encompassing arbitration, mediation, conciliation and Lok Adalat.

The law governing ADR in India is Arbitration and Conciliation Act 1996 which evolved through many legislative interventions as well as judicial interventions. Even after a lot of amendments there were still issues in the law and then the govt of India within its powers made a new round of changes aimed at transforming the arbitration framework in India and that is the draft Arbitration and Conciliation (Amendment) Bill, 2024. The new legal framework visions the ease of enforcing contractual obligations and conducting business across India.

This paper seeks to account the bill's transformative reforms designed to strengthen India's Arbitration regime by fostering Institutional arbitration, enhancing efficiency and reducing judicial intervention. It refines the definition for arbitral institution by emphasizing enhanced powers namely by capacitating institutions to extend award timelines, reducing Arbitrator's fees for unreasonable delays and replacing the Arbitrators thereby alleviating court burdens. The paper deliberates the bill's efficacy in addressing inordinate delays in the resolution of disputes through ADR mechanisms, with the focus on the introduction of specific time limits.

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The bill also endeavours to streamline the process of granting interim relief in arbitration by appointing emergency arbitrators once arbitral proceedings have commenced, but before the constitution of Arbitration tribunal. The Appellate Arbitral Tribunal is an important step in the Indian arbitration regime, as it is a specialized tribunal which deals exclusively with appeals against arbitral awards, thus providing a creative methodology for dispute resolution. Hence, the authors aim to analyse how the Draft Arbitration and Reconciliation Amendment bill may help in ascertaining a robust and streamlined arbitration system across India with special emphasis being laid on Institutional Arbitration, time bound dispute resolution, and reduced judicial intervention.

Keywords – Arbitration, Institutional Arbitration, Judicial intervention, Interim relief, Emergency Arbitrator, Appellate Arbitral Tribunal.

I. Introduction: Understanding ADR

A transparent and impartial court system is considered and accepted as the best model for settling disputes. An independent judiciary which follows the rules for procedure and evidence has evolved and refined over time toensure fairness to the people.Litigation is the well-acclaimed process through which dispute settlement is sought in independent India.[3]Over the years Alternative dispute resolution (ADR) has laid down its efficacy well in dispute resolution when compared with the conventional court room system of handling disputes. ADR paves way for tailoring solutions for individual’s unique circumstances. Flexibility in the working of ADR mechanisms makes it more convenient for the individuals, businesses and institutions to pursue it.The main purpose of existence of ADR is to makeavailable economical, easy, speedy and reachable justice.[4]ADR basically signifies a quasi-judicial process or out of court procedure, parallel to the formal judicial system which tries to settle the conflicts between the parties amicably. Arbitration, Conciliation, Mediation, Negotiation and Lok Adalat are the usual adopted common mechanisms of ADR.

Arbitration

The concept Arbitration is governed by Arbitration and Conciliation Act,1996which incorporates the principles of the UNCITRAL Model Law on International Commercial

[3]Marc Galanter, Fifty Years On, in *Supreme but Not Infallible: Essays in Honour of the Supreme Court of India* 57, 57 (B.N. Kirpal et al. eds., 2000).
[4]Sameer Chaudhary, Alternative Dispute Resolution, *ManupatraFast*, https://www.manupatrafast.com (last visited mar. 2, 2025).

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Arbitration.Arbitration is an out of court dispute resolution mechanism where one or more arbitrators are assigned for the purpose of dispute resolution.The arbitrator must be a third party and he should act impartially.This works as a mechanism where the parties advocate their issue before a neutral third party who is basically termed as an Arbitrator. Unlike mediation and conciliation, arbitral awards are issued to the aggrieved party, binding and enforceable by nature at the end of the arbitration procedure, which are generally final and not appealable. As arbitration proposes a speedy and less technical procedure than the traditional courtroom litigation, it is an ideal method for resolving disputes whether its commercial or contractual disputes.

Arbitration as a dynamic mechanism is bound to classification based on the way it is tailored to unique legal and procedural contexts. Arbitration means any arbitration whether or not administered by permanent arbitral institution.[5]

Institutional v. Ad hoc Arbitration

Institutional arbitration – In this form of Arbitration there shall be a recognised Arbitral Tribunal to supervise and lay down guidelines and provide a structured framework for the proceedings. This is suitable to be chosen by individuals with high value disputes.

In India, it is administered by established arbitration institutions such as the Indian Council of Arbitration (ICA) or the Mumbai Centre for International Arbitration (MCIA). Institutions provide a structured framework and administrative support.

Ad hoc Arbitration – The Ad hoc arbitrational proceedings shall be conducted by arbitrators independently without any institutional supervision. The guidelines and framework shall also be followed by the mutual and independent decision of the parties and the arbitrators.

Mediation

"*An ounce mediation is worth a pound arbitration and a ton litigation*."

- Joseph Grynbaum

Mediation is a non-binding method for dispute resolution wherein parties are facilitated to engage in constructive dialogue, with the objective of resolving their disputes amicably."mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the

[5]Arbitration and Conciliation Act (1996), § 2(1)(a).

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authority to impose a settlement upon the parties to the dispute.[6]Mediation in its plain and simple meaning is nothing but facilitated negotiation.[7]Mediator must be a neutraland unbiased third party may or may not appointed by the court. In a comprehensive and cohesive approach to Mediation it may be defined as a process of dispute resolution where a neutral third party who shall be termed as the Mediator, with the use of effective and specialized communication and negotiation techniques[8] assist the parties under dispute to reach at a collaborative resolution.mediation and other clusters of consensual dispute resolution techniques, except for arbitration are private, informal, oral, more collaborative, facilitative, future-looking, interest-based processes that bring parties to a calibrated, multi-dimensional, win-win remedy that is more durable because of the parties' consent in the outcome.[9]Mediation can be classified mainly into two types;

1.Court- referred mediation: Sec. 89 of Code of Civil Procedure, 1908 has provided for mediation, asthe Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

2.Private Mediation: Disputes at the stage of pre-litigation are consulted for private mediation.

In Advocate Bar Association, Tamil Nadu V. Union of India,[10] The Supreme court held in reference of Mediation process that conciliation and arbitration are obligatory for court matters. This judgement turned out to be pivotal in granting social and legal validation for Mediation.It has got to resolve a wide range of problems such as delay, excessive cost and procedural intricacies and capacitate the parties to get indulged in the process of dispute resolution. Hence it has the ability to addressissues and provide remedies beyond those which are available from conventional courts.

Conciliation

Conciliation is "a process in which a neutral person meets with the parties to a dispute which might be resolved; a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their

[6] Mediation Act (2023), § 3(h).
[7]Tom Arnold, Mediation Outline: A Practical How-to Guide for Mediators and Attorneys, in Alternative Dispute Resolution 210 (P.C. Rao & William Sheffield eds., Universal L. Publ'g Co. 1997).
[8]Joanne Goss, An Introduction to Alternative Dispute Resolution, 34 Alta. L. Rev. 1 (1995) (Can.)
[9]Anil Xavier, *Mediation: its origin & growth in India*, 27 Harv. L. &Pol'y Rev. 2 (2006)
[10]Advocates Bar Association v. Union of India, AIR 2005 SC 3353, 4 Bom. C.R. 839 (2005).

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differences”.[11]The procedure for conciliation initiates by sending a written invitation for conciliation by one party to another which contains the subject matter for the dispute in brief. The acceptance of the opposite party is mandatory for commencing the conciliation proceedings. A delay of thirty daysfrom the date the party sent the invitation or beyond the prescribed period for acceptance in the invitation amountsto rejection.

The appropriate Government may, by notification in the Official Gazette, appoint number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of disputes.[12]The conciliator, an expert well-versed in the subject matter of the dispute and acting impartially is given an active role in finding a solution to the dispute. Conciliation is mentioned under The Arbitration and Conciliation Act, 1996 but not defined.Disputes covered under this mechanism includes industrial disputes, marriage disputes, family disputes etc. Part III of the act states that conciliation of disputes arising out of legal relationships extends to disputes, whether contractual or not.

In Guru Nanak Foundation V. Rattan Singh & Sons,[13] it was observed that

“Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal more effective and speedier for resolution of disputes avoiding procedural claptrap and this led to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without an exception challenged in the courts has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the court been clothed with legalese of unforeseeable complexity.”Therefore, the conciliation process offers a more feasible and adaptable mechanism of dispute resolution due to its cost effectiveness and efficiency.

Negotiation

‘Negotiation and discussion are the greatest weapons we have for promoting peace and development’– Nelson Mandela

[11] Garner, *Black’s Law Dictionary* (9th ed. 2009).
[12]Industrial Disputes Act, § 4, No. 14 of 1947, INDIA CODE.
[13]Guru Nanak Found. v. Rattan Singh & Sons, (1981) 4 SCC 634 (India); (1982) 95 Mad. L.W. 133 (India).

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Negotiation is a type of Alternative dispute resolution mechanism wherein the parties come together and try to resolve the dispute through mutual understanding. It can be defined as self-counselling between the parties.Negotiation is a non-binding process which is not governed by law.Appointment of a negotiator, a third party to resolve the dispute is the option or discretion of the disputing parties. Negotiation is very cost effective while comparing to litigation and any other mechanisms for resolving disputes. Negotiation doesnot require a neutral third party with a decisional-making power.As the goal of negotiation is a mutually acceptable resolution, it is less formal without any stringent procedures or rules governing it. The settlement is private and not public while it is not subject to judicial review.And the settlement agreement is treated and enforced as a contract. Unlike litigation where there is a winning team and losers' team, negotiation gives a space to sit together and find a solution which is mutually acceptable. The method of negotiation as an alternative dispute resolution has evolved through awide range theories which entails;

- Distributive bargaining
- Integrative Negotiation
- Principles Negotiation

Lok Adalat

Lok Adalat or the 'people's court' is formed by the government to settle disputes.The legal services authorities Act, 1987 governs the establishment of Lok Adalats in India. As per section 19 of the Legal services authorities Act, 1987, every State authority or District authority or the Supreme Court legal services committee or every High Court legal services committee or, as the case may be, Taluk legal service committee may organise Lok Adalats at such intervals and places.It is presided over by a sitting or retired judicial officer as chairman. Clause 2 of the aforementioned provision provides that Every Lok Adalat organised for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

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In the case of MoideenSevamandir v. A.M. Kutty Hassan[14], the Supreme Court has directed the National Legal Services Authority to formulate uniform guidelines for effective functioning of LokAdalats. Subsequently, on 20th October, 2009 the National Legal Services Authority (Lok Adalat) Regulations, 2009 were made. Lok Adalat can be categorized in to two types; The first type of Lok Adalat which are constituted under Section 19 of the Act whichlacks adjudicatory function or powers and perform solely conciliatory roles. The second type is Permanent Lok Adalat,established under Section 22B (1) of Legal Services Authorities Act, 1987 to deal with disputes related to public utility services. This type of Lok Adalatpossesses both adjudicatory and conciliatory functions and powers. As the name suggests, this is a permanent body of redressal available to the citizens for settling their disputes unlike the Lok Adalatorganized at regular intervals of time. The permanent Lok Adalat is a process to resolve all the disputes which arise between an individual and the public utility services before the disputes are taken to the court.[15]

History and evolution of ADR

Indian judicial system, one of the oldest judicial systems is becoming inefficient due to the increasing pile of pending cases. “An independent and efficient judicial system is one of the basic structure of our constitution …It is out constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases.”[16] ADR is a substitute to the conventional mechanism for resolving disputes. Settlement of disputes through the intermediation of a third party has been followed by Indians from time immemorial. In olden days, the village elders sit and listen to both side’s arguments and reach at a conclusion and solve the disputes peacefully and amicably. Now this phenomenon got statutory recognition and acknowledges it as ADR.

The Arbitration Act, 1899:

The first India Arbitration Act was passed on 1st July 1899.which was mainly based on the British Arbitration Act of 1899 and at that time it was applicable only to the presidency towns of Calcutta, Bombay, and Madras.[17]

The Arbitration Act of 1940:

[14]Moideen Sevamandir v. A.M. Kutty Hassan, (2009) 2 SCC 198.
[15]Law & Practice of Alternative Dispute Resolution in India
[16]Brij Mohan Lal v. Union of India, (2002) 4 Scale 433.
[17]Jasime Joseph, “Alternate to Alternatives: A Critical review of claims of ADR” available at http://www.nujs.edu/ accessed on 19th Jan 22.

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This Act was enacted to amend the laws relating to arbitration, thereby replacing the former Act of 1899. It empowered Indian courts with significant authority to remit, modify, and set aside awards on specific grounds. Despite possessing amendments aimed at strengthening the Indian arbitration regime, the major drawback of the Act was its failure to recognize conciliation and its allowance of conventional courts to excessively interfere with arbitral proceedings, thereby undermining the true meaning of arbitration as an alternative dispute resolution mechanism. The Act also made provisions for parties to challenge the arbitration agreement, despite their voluntary agreement to arbitral proceeding.

The Arbitration and Conciliation Act, 1996:

The Act of 1996 was based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980.[18]The Act superseded the 1940 Act and is designed to streamline the dispute resolution framework more efficiently. It came into practice in India from 22nd August 1996 onwards.

II. Research Objectives

This research paper is encompassed of certain key objectives of the 2024 draft Arbitration and Conciliation Amendment bill, which seeks to strengthen the Indian Arbitration regime:

Examining significant modifications in the 2024 Draft Bill:

The principal objective is to have a thorough understanding on the new amendments in the draft bill where the key provisions being Institutional arbitration, Appellate Arbitral tribunal, Emergency Arbitration, augmented descriptions for Arbitral Awards, and mechanisms for interim relief. This examination will facilitate gaining deeper insights into the evolving landscape of arbitration law in India.

- **Evaluating the ramifications of Emergency Arbitration:** This serves as a mechanism for granting immediate relief for individuals before the constitution of an arbitral tribunal.

[18]Marc Jonas Block, "The Benefit of ADR for International Commerce and IP Disputes, Rutgers Law Record, Vol. 44, 2016-17 accessed on 17th Jan 22

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- **Institutional Arbitration – Mechanisms for enhancing efficiency:** This research on this key provision will enable an understanding of the procedural efficiency and ease of Arbitral proceedings resulting from the paradigm shift of Ad hoc proceedings to Institutional Arbitration.
- **The constitution of Appellate Arbitral Tribunal:** The study will also examine the Appellate Arbitral Tribunal, which is designed to review arbitral awards and protect parties where initial rulings may have been unfair.
- **Reinforcing Interim Relief Mechanisms:** The research shall also look for expanded provisions for interim relief, analysing the ease of enforcement of Interim measures and how they work with court support. It shall also explore how these nuances subjects' arbitration to become more effective.

By critically examining the nuances of the 2024 Draft Arbitration and Conciliation Amendment Bill, the paper seeks to inform the policymakers and legal practitioners about the bill' efficiency to streamline the process of dispute resolution and thereby ultimately reducing the burden of court.

III. DraftArbitration and Conciliation (Amendment) Bill, 2024

The Government of India has taken several steps to strengthen the dispute resolution environment in the country and to promote Ease of Doing Business and enforcement of contracts *inter-alia* through legislative interventions from time to time. The Department of Legal Affairs is presently in the process of considering further amendments in the Arbitration and Conciliation Act 1996.[19]

The Department of Legal Affairs, Government of India released the draft Arbitration and Conciliation (Amendment) Bill, 2024 which is known as the **"Draft Bill"**on 18 October 2024 attracting public comments on the same.On June 2023, an Expert Committee on Arbitration Law was constituted under the chairmanship of Dr. T.K. Vishwanathan to examine the working of the Arbitration Law in India.The key amendments introduced in the draft bill emphasises at ensuring fair and speedy disposal of arbitral proceedings, limitingjudicial interventionin arbitration processes andaugmenting institutional arbitration in India. This initiative aspires to enhance the dispute resolution mechanism in India by reforming the legal frameworksthrough legislative amendments to the Arbitration and Conciliation Act, 1996.By modifying the Act, Government of India intent to promote the ease of doing business and

[19]Press Information Bureau, Govt. of India, Ministry of Law & Justice, *Inviting Comments on the Draft Arbitration and Conciliation (Amendment) Bill, 2024* (Mar.6, 2025), https://legalaffairs.gov.in/.

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enforcing contracts in our country. In a nutshell, the draft bill seeks to modernise the arbitration procedures in India in every aspect.

Change in the Act's title

The bill proposes an amendment to the section 1(1), renaming the title of the act from the **"Arbitration and Conciliation Act, 1996"** to the **"Arbitration Act, 1996".**

This step is crucial in streamlining the Act's mandate in streamlining the Arbitral proceedings as a standalone mechanism, with the incorporation of Conciliation provisions into the Mediation Act 2023.

Recognition of the concept of 'seat'

Formal recognition of the concept of 'seat' is a welcoming change which was absent in the current legislation. This is an initiative to bring the Indian arbitration laws inline with the international standards.

- Replaces **'place'** with **'seat'**in sections 20(1) and 20(2)

The ambiguity regarding the use of the term place omitting specific terms such as seat or venue was persisting since the enactment of the Arbitration and Conciliation Act, 1996. This bill provides the 'seat' as the jurisdictional locus while the 'venue' denotes physical location of arbitration. There is no explicit difference between seat and venue, however Article 20(2) permits arbitral hearings to occur any venue other than the specified seat.

- Substitution of the definition of **'court'**

The Draft bill proposes enhancing the definition for courtby adding Section 2-A of the act. In case of domestic arbitrations seated in India, if the seat of arbitration is designated, a court according to the new definition means, which having pecuniary and territorial jurisdiction over the subject matter. But in case of International commercial arbitration, a high court having territorial jurisdiction is defined as the court.

Institutional Arbitration

Institutional Arbitration has revolutionized the Arbitration landscape offering a robust and efficient framework for resolving out the disputes. There is a clear-cut advantage under the institutional arbitration which provides a clear adopted rule of arbitration, proper timelines

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for the conduct of proceedings, expertise staff for smooth proceedings and list relating to panel of trained arbitrators available under the particular institution.[20]

An arbitral institution is a crucial part of Institutional arbitration. It is typically referred to as a permanent organization with the rules being set by itselfwhich basically governs the services it offers and the procedural aspects ofthe arbitration process.

Currently, the term 'arbitral institution' as defined in section 2(ca) of the Act, includes those institutions authorized only by Supreme court or High courts. The draft bill proposes an amendment to this by introducing an expanded definition that includes anyorganisationthat conducts arbitration proceedings independentlyin accordance with its own rules or as agreed upon by the parties involved.

The definition has been broadened as follows;

"A body or organisation that provides for conduct of arbitration proceedings under its aegis, by an arbitral tribunal as per its own rules of procedure or as otherwise agreed by the parties."

Advantages of Institutional Arbitration:

- Institutional arbitration offers more clear and concise way for the settlement of intricate procedural disputes when compared with the Ad hoc Arbitrational proceedings. Matters like arbitrator challenges, consolidation of proceedings, and party joinders are being able to get resolved with more ease. Hence it offers more certainty and clarity over Ad Hoc proceedings which basically carries ambiguity in the adjudication of complex procedural issues. The credibility in resolving challenges to arbitrators is also enhanced in this case, as it is being resolved through an impartial mechanism.
- The feasibility of choosing Institutional Arbitration over Ad hoc arbitration is also attributed to its ability to swiftly constitute tribunals by appointing arbitrators in circumstances where the parties disagree or fails to do so. It also enables granting swift interim relief through emergency arbitration
- Arbitral Institutions also ensure the smooth functioning of proceedings by organising hearing venues, managing fee payments and reviewing draft awards for errors. In contrast, in Ad hoc arbitration, these burdens fall on the tribunal or the parties themselves making the process more complex and thereby reducing its efficiency.

[20] Sundra Rajoo, Institutional and Ad Hoc Arbitrations: Advantages and Disadvantages, The Law Review (2010).

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Appellate Arbitral Tribunal

The incorporation of Appellate Arbitral Tribunals (AAT) under Section 34 A of the 2024 Draft Arbitration and Conciliation Amendment Bill marks a fundamental transformative reform in India's arbitration landscape.

By allowing arbitral institutions to establish AATs to entertain applications for setting aside arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996, the draft bill introduces a two-tiered arbitration mechanism.

The draft bill effectively codifies the Supreme Court's decision in M/S Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd[21], upholding the validity of two-tier arbitration clauses and recognizing the parties' right to an appellate mechanism. By codifying these rights, the draft bill clears up ambiguity and uncertainty surrounding two-tier arbitration.This appellate framework strengthens India's arbitration regime, making it an appealing destination for arbitration, especially in resolving international commercial disputes.

Composition of Appellate Arbitral Tribunal (AAT):

To address concerns arising when the same institution that decides the initial award also handles the appeal and reviews the award's validity, the AAT's composition includes both legal experts and subject matter experts in relevant fields. This enables the tribunal to effectively handle both technical and legal issues.

There are two possible approaches to constitute the Appellate tribunal:

1. The parties subjected to the dispute themselves choosing the arbitrators for the AAT.
2. The Arbitral Institution appointing the members of the Tribunal.

The second option is preferred as it promotes fairness and independence and ensures that the tribunal exists solely for appeals, reduces conflicts of interest and any kind of bias to exist.Moreover, Section 34(1B) of the draft bill supports this approach by mandating the AAT to formulate specific grounds for appeals based on the award passed by the original tribunal, enabling skilled and focused adjudication. However, the draft bill does not permit appellate arbitral tribunals in ad hoc arbitration. This exclusion is supposed to threaten the unity of the arbitration landscape and disrupt the consistency of arbitration jurisprudence.

Modifications in ArbitralAwards

[21]M/S. Centrotrade Minerals & Metals Ltd. v. Hindustan Copper Ltd., AIR 2020 SC 3163 (India).

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The Draft Bill proposes the insertion of Section 31 (2A), mandating an arbitral award to include statements confirming the following[22]-

- Capacity of Parties to arbitrate
- Validity of arbitration agreement under the applicable law
- Parties were given notice of appointment of the tribunal and were able to present their case
- The composition of the arbitral tribunal was in accordance with the parties' agreement
- The arbitration procedure was in accordance with the parties' agreement
- The subject-matter of the dispute was arbitrable under Indian law
- The award dealt with disputes falling within the terms of the arbitration agreement.

Through this modification, the draft bill essentially mandates the inclusion of certain essential procedural requirements to streamline enforcement proceedings, promote fairness, and avoid unnecessary delays in the proceedings.

Some other minor modifications introduced in the bill:

- ***Online dispute resolution***

The Draftbillincorporates online dispute resolution within the scope of definition given for arbitrationthereby adapting to technological advancements.It also acknowledges digital signatures for Arbitration agreements and arbitral awards. (Sections 7(4)(a) and 31(5))

- ***Revision of Interest Rates***

The Bill also do points out a paradigm shift in the revision of interest ratesfrom 2% above the existing rateto 3% above the repo rate of Reserve Bank of India.

- ***Exclusion of the fourth schedule***

The Draft bill removes fourth schedule which consists of the provisions relating to the setting of arbitrator's fees allowing the fees to be set only by the arbitral institutions and in case of Ad hoc proceedings, it is to be decided by the Arbitration Council of India.

- ***Stamping of Awards***

The proposed amendment through the Draft bill to Section 31(1) makes it necessary for the affixation of a stamp on the arbitral award and requires duty payment at the beginning itself , thereby avoid delaying the enforcement or challenge proceedings.

[22] Decoding the Draft Arbitration and Conciliation Amendment Bill, 2024, Saraf & Partners (2024), https://www.sarafpartners.com/decoding-the-draft-arbitration-and-conciliation-amendment-bill-2024/.

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Interim Relief

Interim measures or reliefs are awarded to protect the parties and their properties during the pendency of arbitral proceedings. It is a temporary relief which is in the form of an award or in any other form.

During the course of an arbitration, it may become necessary for the arbitral tribunal or a national court to issue orders intended to preserve evidence, to protect assets, or in some other way to maintain the status quo, pending the outcome of the arbitration proceedings themselves. Such orders are known as 'interim measures' under the Indian Arbitration and Conciliation Act, 1996.[23]Section 9 and section 17 of the draft bill as same as in the Arbitration and Conciliation Act, 1996 empowers both the court and arbitrators to provide interim measures. Indian courts have seen a surge in cases due to the rising number of applications filed under section 9 of the Arbitration Act seeking interim relief. Section 9 currently permits parties to approach the courts seeking reliefs even during the arbitral proceedings, but the draft bill limits this right.

The Draft Amendment Bill permits the parties to approach courtfor interim relief only until the commencement of arbitration proceedings, or it is only valid prior to the constitution of arbitral tribunals. However, parties are free to approach courts before and after the commencement of arbitration proceedings, as well as after the award is made but not yet enforced.The rationale behind this proposal is to encourage parties to seek interim reliefs from arbitral tribunals under section 17 of the Arbitration Act, thereby limiting the judicial intervention in arbitration once thetribunal is established. The bill thereby envisages to minimize the burden of the courts.

As per the Arbitration Act, section 9 demands the arbitration proceedings to be initiated within a time span of 90 days after the court passes the order for interim relief, but the Draft Bill proposes to introduce a slight change as the 90 days' time span starts from the date of filing an application for interim relief, rather than from the date the court issues the order. This measure will curb unduly delays in the initiation of arbitration proceedings and open up the possibility of initiating the proceedings before any such order passes or before such application get disposed of.

The new amendment may invoke criticisms as the availability of interim reliefs at any stage of arbitration proceedings from the courts was very crucial in imparting support to the parties

[23]Shashank Garg, *Alternative Dispute Resolution: The Indian Perspective* (Oxford Univ. Press 2021).

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in protecting the subject matter of the arbitration.To conclude, the suggestions put forward by the Expert committee on amending section 9 reflect a more balanced approach.

Emergency Arbitration

The Draft Amendment Billaims to legitimize emergency arbitrations by providing statutory backing. The Bill proposes to insert a new provision Section 9A, thereby addressing the absence of anexplicit provision foremergency arbitration in the Arbitration Act.Section 2(ea) of the bill proposes to define "emergency arbitrator"as an arbitrator appointed under section 9A. And the Section 9A is as follows –

Emergency arbitrators:

(1) Arbitral institutions may, for the purpose of grant of interim measures referred to in section 9, provide for appointment of emergency arbitrator prior to the constitution of an arbitral tribunal.

(2) The emergency arbitrator appointed under sub-section (1) shall conduct proceedings in the manner as may be specified by the Council.

(3) Any order passed by an emergency arbitrator under subsection (2) shall be enforced in the same manner as if it is an order of an arbitral tribunal under sub-section (2) of section 17 of the Act.

(4) An order of the emergency arbitrator may be confirmed, modified, or vacated, in whole or in part, by an order or arbitral award made by the arbitral tribunal.

Prior to the constitution of the arbitral tribunal, if there is an urgent requirement of interim relief, the parties can appoint emergency arbitrators as per the procedure outlinedin the institutional rules. Introduction of this provisionreflects as a significant response to the landmark decisionin Amazon.Com Nv Investment Holdings Llc vs Future Retail Limited[24] in whichthe Supreme Court held that the 'award' passed by an Emergency Arbitrator in an arbitration seated in India is enforceable under Section 17(2) of the Act as an interim order of an arbitral tribunal made under Section 17(1) of the Act.

Key aspects of Emergency Arbitration:

- **Urgent Interim Relief:** Emergency arbitration can grant urgent interim relief outlined in section 9.

[24]Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., AIR 2021 SC 3723(India).

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- **Pre-Arbitral Tribunal:**Emergency arbitration takes place before the constitution of the arbitral tribunal.
- **Appointment:**Only arbitral institutions have the authority to make such appointments.
- **Enforceability:** Awards carry the same enforceability as interim measures passed under section 17(2).
- **Review by arbitral tribunal:** The constituted arbitral tribunal is entitled to review, modify or vacate orders passed by emergency arbitrators.
- **Conduct of proceedings:** The proceedings shall be administered in the manner specified by the Arbitration council of India.

The legitimization of emergency arbitrator is a very significant amendment introduced through the Draft Bill; however, itlacks a clear guidance on the appointment procedures for emergency arbitrators and also, it is silent regarding emergency awards from arbitrations seated outside India.

IV. Conclusion:

The Draft Arbitration and Conciliation (Amendment) Bill, 2024 indeed marks a breakthrough moment in India's arbitration regime. This draft bill marks a pivotal milestone in India's journey to become a global arbitration hub by fostering efficiency, transparency and greater trust in the Arbitration framework across the nation. By introducing the new key provisions, it bridges the lacunae left by previous legislations in this regime.

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